IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-945

UNITED MINE WORKERS OF AMERICA, *Cross-Petitioner,*
v.
CECIL L. KINTY, d/b/a KINTY TRUCKING COMPANY

UNITED MINE WORKERS OF AMERICA, *Cross-Petitioner,*
v.
RUTH M. KITTLE, Individually and as Administratrix With Will Annexed of the Estate of Bertsell Kittle, Deceased

UNITED MINE WORKERS OF AMERICA, *Petitioner,*
v.
THOMAS J. GATES, d/b/a DOROTHY COAL COMPANY and GATES TRUCKING COMPANY

UNITED MINE WORKERS OF AMERICA, *Petitioner,*
v.
LAWRENCE LAYMAN, d/b/a LAYMAN COAL COMPANY

UNITED MINE WORKERS OF AMERICA, *Petitioner,*
v.
JOSEPHINE LACARE, Widow of Original Plaintiff ORLANDA LACARE, and AGNES LACARE GOBEL, PATRICIA LACARE CLEAVENGER and FRANCES LACARE

PETITION AND CROSS-PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION AND CROSS-PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner and cross-petitioner, United Mine Workers of America (hereinafter "UMWA"), prays that a writ of certiorari issue to review the following judg-

ments of the United States Court of Appeals for the Fourth Circuit entered on October 21, 1976:

> *Cecil L. Kinty, d/b/a Kinty Trucking Company* (hereinafter "*Kinty*") v. *UMWA*, Case No. 75-1462, vacated and remanded for a new trial.
>
> *Ruth M. Kittle, Individually and as Administratrix With Will Annexed of the Estate of Bertsell Kittle, Deceased* (hereinafter "*Kittle*") v. *UMWA*, Case No. 75-1463, vacated and remanded for a new trial.
>
> *Thomas J. Gates, d/b/a Dorothy Coal Company and Gates Trucking Company* (hereinafter "*Gates*") v. *UMWA*, Case No. 75-1464. The judgment in favor of Gates was vacated and remanded with directions that the judgment be reduced from $53,000 to $43,000.
>
> *Lawrence Layman, d/b/a Layman Coal Company* (hereinafter "*Layman*") v. *UMWA*, Case No. 75-1465, affirming judgment in amount of $14,000.
>
> *Josephine Lacare, Widow of Original Plaintiff Orlanda Lacare, and Agnes Lacare Gobel, Patricia Lacare Cleavenger and Frances Lacare* (hereinafter "*Lacare*") v. *UMWA*, Case No. 75-1466, affirming judgment in amount of $38,000.[1]

These five cases were consolidated for trial with the cases of five other unsuccessful plaintiffs. UMWA appealed all five adverse judgments, and all five cases were consolidated for briefing and oral argument in the Fourth Circuit.

Kinty and Kittle have filed a petition for writ of certiorari, Case No. 76-759. Therefore, both sides requested the Clerk of the Fourth Circuit to certify the single record to this Court in accordance with Rule 21 of this Court's Rules.

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[1] Liability and damages were established at separate trials.

OPINIONS BELOW

The Fourth Circuit opinion appears in Appendix A and in the certified transcript of the record. The opinion is not officially reported but is unofficially reported at 93 L.R.R.M. 3040.

JURISDICTION

The Fourth Circuit judgments were entered on October 21, 1976. This Court's jurisdiction is invoked under 28 U.S.C. §§ 1254(1) and 2101(*c*).

BASIS FOR FEDERAL JURISDICTION BELOW

Jurisdiction of the District Court was based upon Section 303 of the Labor Management Relations Act, 1947 (29 U.S.C. § 187).[2]

QUESTIONS PRESENTED

(1) Does Section 303 proscribe picketing of the primary employer, irrespective of where the picketing takes place and even picketing at the premises of the primary employer which induces and encourages employees of a second employer, performing work not only essential to the primary employer's everyday operations but also the same work as employees of the primary employer, not to perform such work? (This question is applicable to all five cases.)

(2) Does Section 303 proscribe work stoppages and picketing directed at three employers operating at the same site and performing the same work? (This question is applicable to the *Layman, Kinty,* and *Kittle* cases.)

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[2] Hereinafter referred to as "Section 303" or "the Act".

(3) Does Section 303 proscribe violent primary activity, which cannot be attributed to the union, which might have induced the employees of other employers, not doing business with the primary employer and operating a separate business at another location, not to work? (This question is applicable to the *Layman, Gates,* and *Lacare* cases.)

(4) May a union be held responsible for the conduct of unknown and unidentified persons, directed against one employer, upon evidence introduced in another case that union agents were responsible for acts of other pickets directed against other employers at a different time and place and for which the jury found the union was not responsible? (This question is applicable to all cases.)

STATUTES INVOLVED

The statutory provisions involved are Section 303 of the Labor Management Relations Act, 1947, prior to its amendment in 1959, 29 U.S.C. §187; Sec 301(e), 29 U.S.C. 185(e). These statutory provisions are set forth in Appendix B hereto.

STATEMENT OF THE CASE

Proceedings Below:

Twelve cases were filed in the United States District Court for the Eastern District of Kentucky alleging that the UMWA was liable to the plaintiffs under Section 303 for the resulting damages to their business and property. These cases were transferred to the Northern District of West Virginia at Fairmont, West Virginia. Prior to the trial, two of the plaintiffs voluntarily dismissed their cases.[3]

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[3] They were the Green Valley Coal Company and Blue Ridge Coal Company

The remaining ten plaintiffs' motion to consolidate the cases for trial was granted over UMWA's opposition, and the ten cases went to trial on the issue of liability on September 5, 1974. The jury found in favor of five of the plaintiffs, namely, Kinty, Kittle, Gates, Layman, and Lacare. The jury found in favor of UMWA in the remaining five cases, namely, Sinsel Coal Company, Thompson Coal Company, C & P Coal Company, Marra Brothers, and M & T Coal Company (hereinafter "Sinsel", "Thompson", "C & P", "Marra Brothers" and "M & T").

The Facts:

Kinty and Kittle each had a truck hauling business and, in April of 1958, were hauling coal on a tonnage basis exclusively for C & P, one of the unsuccessful plaintiffs below. C & P operated strip mines located on Buck Run, a narrow dirt road leading off the main highway between Flemington and Simpson, West Virginia. C & P used its own trucks, and trucks belonging to Kinty and Kittle, to haul coal to C & P's tipple located four miles away on a railroad near Flemington, West Virginia, where the coal was processed and loaded into railroad cars for shipment to the consumers. Both hired and paid their own drivers, who worked along with the truck drivers of C & P and performed their tasks in the exact same manner. Because of the nature of the work, hauling coal from the strip to the tipple, the employees required little or no supervision or direction. Mr. Kinty also did other work such as running a grader in the pits, cleaning the coal or whatever was needed to be done, the same as the other C & P employees working the strip pits.

Layman operated a small deep mine on property leased from C & P. Layman personally operated his own truck which hauled the coal from the mine to a tipple owned and operated by the Waddell Coal Company.

On April 3, 1958, a work stoppage began at the mines of C & P.[4] C & P, being advised by its employees that they wanted something better and wanted a union, told them to go home and talk it over and report back to work on Monday, April 7. Kinty and two of his truck drivers picked up their trucks at the C &P tipple where they had customarily parked their trucks overnight. Both of them drove to the strip pits and, upon their arrival, one of Kinty's drivers and other C & P employees advised Kinty they had union cards and were not going to work.

On the first day of the work stoppage, Layman was told by the pickets to stay out of there. Consequently, Layman shut down his mine. It was never reopened.

On April 7, C & P employees picketed the gate leading to the strip pits. Also present were two UMWA organizers who had been called in by the C & P employees to represent them. No employees went to work. At the request of UMWA representatives, a meeting was held that afternoon with C & P and Kinty. At the meeting, UMWA asked C & P to sign a UMWA collective bargaining agreement. No agreement was reached.

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[4] It is disputed whether the stoppage was the result of a strike or a lockout. In a separate proceeding, the NLRB entered into a settlement agreement with C & P, whereby C & P acknowledged a lockout and made back-pay payments to C & P employees and employees of Kinty and Kittle.

The picketing continued until July 1959, adjacent to Buck Run Road on farm land owned by one of the C & P employees. On November 16, 1958, two of C & P's shovels were blown up. In July 1959, another shovel was blown up and destroyed.

Sometime in the latter part of 1958, Kinty drove one of his trucks to the tipple operated by the Blue Ridge Coal Company, one of the original plaintiffs who had, prior to the trial, voluntarily dismissed its complaint. At the Blue Ridge tipple, an unknown individual threw a rock at the truck and broke the windshield.

After the work stoppage began at C & P, Kittle stopped hauling coal because C & P was shut down and there was no coal to be hauled. Both of his drivers joined the picket line and received UMWA strike benefits which consisted of $30 a week to employees who were on strike and who had signed cards authorizing UMWA to represent them. Sometime later, Kittle hauled one load of coal for Coffman and Company, which was located in Brownton, West Virginia, but stopped because Coffman's employees were picketing the mine and told him not to return to the mine after he dumped his initial load at the tipple.

The Lacare Case

Lacare operated a mine on Berry Run which is located just north of Flemington, West Virginia. Within a week after picketing began at C & P, Lacare's employees quit working for him and one-by-one they all went on the picket line at C & P. Some months after the mine shut down, Lacare and Gobel, Lacare's son-in-law, tried to haul coal from Lacare's coal bin to the Blue Ridge Coal Company's tipple which was

on strike. Someone, whose identity was not known, shot at them from the woods. Lacare then ceased hauling coal. There was no picketing of Lacare's mine.

The Gates Case

Gates operated a deep mine and a coal-hauling trucking business.[5] In April 1958, he had seven trucks which hauled coal from his own mine and occasionally on a tonnage basis for several other coal producers in the general area. In April 1958, Gates was hauling coal for Sinsel and Claghorn. Sometime in April of 1958, Gates shut down his mine which was located on Barton Run, Ashton, West Virginia. The reason assigned by Gates for shutting down his mine was that some "pickets", including two Gates employees, stationed at the mouth of Barton Run, the road leading to his mine, asked him not to haul any more coal. UMWA did not ask him to sign a collective bargaining agreement.

Two of Gates' drivers stopped hauling coal at the Sinsel and Claghorn mines because of the presence of pickets at those mines.

REASONS FOR GRANTING THE WRIT

QUESTION ONE

The Fourth Circuit's affirmance of the judgments entered against UMWA in the *Layman* and *Lacare* cases and its remand in the *Kinty, Kittle,* and *Gates* cases is based upon an erroneous application of this Court's interpretation of Section 303 in *United Steelworkers* v. *NLRB,* 376 U.S. 492 (1964); *IUE Local 761* v. *NLRB,* 366 U.S. 667 (1961), *Brotherhood of*

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[5] Dorothy Coal Company and Gates Trucking Company.

Railroad Trainmen v. *Jacksonville Terminal Company*, 394 U.S. 369 (1969); *NLRB* v. *Operating Engineers, Local 823*, 400 U.S. 297 (1971), and *NLRB* v. *International Rice Milling Company*, 341 U.S. 665 (1951); and is in conflict with the decision of *NMUA* v. *NLRB*, 367 F.2d 171 (8th Cir. 1966), *cert. denied*, 386 U.S. 959 (1967).

The District Court charged the jury that Section 303 provides, (1) "that it shall be unlawful for any labor organization to induce or encourage employees of any employer to engage in a strike or boycott where an object thereof is forcing or requiring certain described persons to join in the labor organization . . .", (2) "the act proscribes that certain activities irrespective of where they take place and even in picketing at the premises of a primary employer, a union must exercise its rights consistent with the rights of neutral employers to remain uninvolved in the dispute."

In its appeals of the five adverse judgments, UMWA asserted that the above charge erroneously stated the prohibitions of Section 303. The Fourth Circuit, however, misconstrued the issues presented and erroneously misapplied the facts by basing its decision on the facts presented in one case as if the same facts applied to all cases, including the cases in which UMWA prevailed. It in fact tried the cases "*de novo.*"

The Fourth Circuit erroneously stated that UMWA attacked all five judgments by advancing the thesis that a union may picket a neutral employer irrespective of where the picketing occurs if the work of the employees of the neutral employer is "necessary to

the normal operations" of the primary employer. The Fourth Circuit then set forth a hypothetical situation whereby such an argument would permit picketing of a secondary employer's place of business away from the primary site. By this method, the Fourth Circuit ignored the issue presented to it on appeal and affirmed the finding of a Section 303 violation.[6] UMWA made no such contention or argument. UMWA asserted that the picketing in question was primary in that it was directed at C & P, Kinty, and Kittle, as UMWA represented the employees of all three employers, and that such picketing was not proscribed by Section 303. Kinty and Kittle employees were performing the same services as C & P truck drivers. The picketing was conducted along a narrow private road, over which the coal was hauled, leading from C & P's strip mines and to the public road leading to C & P's tipple, and at the gate leading from the private road to the strip mines. As part of its primary activities, UMWA had a right to picket the mines, the coal trucks, and the tipple. It was aimed at all those approaching the situs whose mission contributed to the operation which the work stoppage was endeavoring to halt. Neither Kinty nor Kittle had any other business site. Their trucks remained on C & P's property when not in use. UMWA further asserted that picketing which induces or encourages employees of employers, performing work necessary to the ordinary business operations of C & P, to respect a primary picket line is not proscribed by Section 303 as this Court clearly set forth in *Steelworkers, supra,* and *Electrical Workers, supra.*

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[6] Fourth Circuit's remand in Kinty and Kittle was based on District Court's failure to submit to the jury the factual question whether they were "neutral" employers. Their petition for certiorari deals with the question of whether they were neutral employers as a matter of law.

UMWA also challenged the judgments in *Kinty* and *Kittle* because of the District Court's charge relating to a definition of a "neutral employer." Over UMWA's objection, the District Court charged the jury that the employee of a secondary employer was, for example:

> ". . . the employees of a hauler is engaged in his employment, he works for an independent miner, which is called a hauler or a trucker, has nothing to do with the tipple owner or the other person, no legal connection with him, is just an independent hauler, the union cannot . . . either induce or encourage the employees of any employer to engage in a strike, see, that is the employees of the hauler of the coal . . ."

and that Kinty and Kittle were neutral employers, "they had people working for them driving their trucks." The District Court then instructed the jury that C & P (the coal producer) was a primary employer and that the Act proscribes picketing at the premises of the primary employer unless it (the union) exercises that right consistent with the right of the "neutral employers" to remain uninvolved in the dispute and that a union cannot escape the proscriptions of the Act by claiming to organize the coal producers and the transporters of the coal. The District Court refused to charge the jury that any employer in cahoots with, or acting as a part of, [a primary employer] was not a "neutral employer" within the meaning of Section 303.

UMWA argued that Kinty and Kittle were "allies" of C & P regardless of the fact that there was no legal connection between Kinty, Kittle, and C & P.

Kinty also did other work directly related to the production of coal. In addition, Kinty even participated in the negotiations between C&P and the UMWA and at the urging of C&P tried to get C&P employees to return to work. It would be difficult to find a greater interest in the labor dispute than Kinty and Kittle's interest. At least there was sufficient evidence to require an "ally" charge to the jury. Herein is an important question of law that has not heretofore been decided by this Court and has caused the Circuits and the Board great difficulty. Under what set of facts can two employers be deemed so integrated operationally that, for the purposes of a secondary boycott, they must be deemed a primary employer, a joint or common venture or a straight-line operation or an alliance of interest? This question has been dealt with by the various Circuits in *Teamsters Local 24* v. *NLRB*, 266 F.2d 675 (D.C. Cir. 1959); *Carpet, Linoleum, S.T. and R.F.C.L., Local Union No. 419* v. *NLRB*, 467 F.2d 392 (D.C. Cir. 1972); *NLRB* v. *Teamsters Local 810*, 460 F.2d 1 (2d Cir. 1972); *Teamsters Local 728* v. *Empire State Express, Inc.*, 293 F.2d 414 (5th Cir. 1961). But no agreement has been reached among the Circuits as to the definition of an "ally".

One of the crucial factual determinations in deciding the "ally" question is described in *Local Union 419* v. *NLRB, supra,* wherein the Board and the D. C. Circuit found that employees of the independent contractors involved therein were not neutral employees because the prime contractor did not have employees doing the same work as the employees of the independent contractor. These facts are absent in the *Kinty* and *Kittle* cases. In *Laborers' International Union*

of North America, Local 859 v. *NLRB,* 446 F.2d 1319 (D.C. Cir. 1971), the D. C. Circuit held that the union had a right to picket independent truckers as "allies" wherever they might be found transporting the product of the primary employer.

Crucial to the question herein is that the transportation of coal from the mine to the tipple is but a part of the entire business operations of C & P. Some coal operators use trucks; others use conveyor belts, depending upon the physical location of the business. The truck drivers are part of the bargaining unit and are included in the collective bargaining agreements that UMWA has with all coal operators. It is unlike the situation where the independent truck haulers are employed by some other employer, such as a consumer of coal or an independent tipple operator who purchases the coal from the producer and then processes and transports it to the consumer.

The Layman Case

Layman operated a coal mine, under lease from C & P, on the same site as the C & P strip mines. There was no separate gate for Layman's employees. Layman operated his own truck which hauled the coal from the mine, over the same road as C & P's trucks, to a coal tipple. On the first day of the picketing at the gate leading to C & P's and Layman's mines, and before UMWA became involved in the dispute, the C & P employees asked Layman not to haul any more coal. Layman complied and shut down the mine. UMWA contended that the picketing of C & P does not become secondary because, (1) two employers occupy a common situs, (2) inducement of the *employer*

does not violate Section 303,[7] and (3) such picketing could not have as its object to cause Layman to cease doing business with C & P because Layman was not doing business with C & P. Layman merely leased its coal land from C & P. UMWA recognizes that the situs of the picketing may be taken into consideration as a factor in determining the objectives of the picketing, but, in the instant cases, the situs of the picketing and the work performed by the so-called neutral employers makes it clear that the work stoppage and the picketing constitute traditional primary activity as set forth in the *Electrical Workers, supra,* and *Steelworkers, supra,* cases.

The Gates Case

(Dorothy Coal Company and the Gates Trucking Company)

The *Gates* case presented a different set of facts. Gates owned and operated the Dorothy Coal Company and the Gates Trucking Company. Dorothy Coal was producing coal on a site located a number of miles from C & P. Gates hauled the coal from the Dorothy Coal's mine to a tipple for processing and loading into railroad cars. Gates only occasionally hauled coal for other coal mine operators in the general vicinity of Barbour and Harrison Counties, West Virginia. Gates shut down his mine when some unidentified "pickets",

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[7] These cases deal with events occurring prior to the § 303 amendment effective September 14, 1959, by § 704(e) of the Labor Management Relations Act of 1959, 73 Stat. 545. Prior to 1959, § 303 inducements directed against the employer himself, or a single employee, were not prohibited by the Act. However, the issue is still important because, even after the amendment in 1959, inducement of an employer became forbidden only if the inducement was of a coercive nature.

which included two of Gates' employees, asked Gates not to haul coal from his mine. These "pickets" were at the mouth of Barton Run, a small road leading to Gates' mine. UMWA did not attempt to organize any of Gates' employees or to represent them in any collective bargaining with Gates. It did not participate in the picketing or have any knowledge of it. UMWA contended at the trial, and on appeal that, (1) the picketing of the Dorothy Coal mine constituted primary picketing, (2) that inducement of an employer, as distinguished from employees, to withhold services from the primary employer is not proscribed by Section 303, and that, (3) as a matter of law, Gates Trucking Co. was not a "neutral" employer if there was a primary dispute at the Dorothy Coal Company, because Gates owned, operated and controlled the entire operation. The hauling of coal from the mine to the tipple by the Gates Trucking Company was merely a part of the operation to produce and sell coal. It was a single, integrated operation. Regardless of the legality of the picketing of Gates, there was no evidence to support a finding that UMWA was responsible for such conduct.

QUESTION TWO

The District Court further charged the jury, and the Fourth Circuit approved, that Section 303 prohibits a union from organizing at the same time the employees of two employers engaged in business on the same site and also prohibits a union from organizing the employees of a third employer performing work essential to the business of one of the employers and whose employees are performing identical work. If the employees of coal operators doing business in the same area

may not engage in work stoppages or picketing at the same time, their rights guaranteed by Section 7 of the Act will be substantially limited. Limitation of such fundamental rights has not been, but should be reviewed by this Court.

According to the interpretations of Section 303 by the District Court and the Fourth Circuit, no work stoppage or picketing could be free from the prohibitions of Section 303 as long as the principal employer subcontracted some phase of its operations to another employer. Application of this theory of course, would not only have a great impact upon the labor relations in the coal industry, but in every major industry in the United States.

QUESTION THREE

Of even greater importance is the Fourth Circuit's declaration in the *Gates, Layman,* and *Lacare* cases that the Court of Appeals may infer that violent activities "consisting of threats, assaults, mass picketing, overturned cars, dynamiting, and shooting directed at the primary employer were known by all employees of other neutral employers in the vicinity" and that it could be inferred that the violence caused the employees of other employers to cease work, and, therefore, such violent activity comes within the proscription of Section 303, *even though the "neutral employer" was not even doing business with the primary employer.*

The Fourth Circuit's "violence" theory is at war with this Court's holding in *International Rice Milling Co., supra,* wherein it said that, "the substitution of violent coercion in place of peaceful persuasion would not in itself bring the complained of conduct into con-

flict" with Section 303. "It is the object of union encouragement that is proscribed, rather than the means adopted to make it felt." *Id.* at 672. The violence theory was again rejected in *Steelworkers, supra.* Furthermore, in the instant cases, the UMWA was absolved of all responsibility for the violent conduct, as it took place at the premises of other unsuccessful plaintiffs, namely Marra Brothers and M & T, which were located in Brownton, West Virginia many miles from C & P, or they took place on the premises of Thompson located in Rosemont, West Virginia, or at the premises of Insel, or at C & P, and at the premises of Blue Ridge Coal Company, which dismissed its suit prior to the trial. In addition, it cannot be legally inferred that this conduct in any way caused the employees of Layman, Gates, or Lacare to cease work, because it occurred after their employees ceased work. More startling is that the state of mind or knowledge of these employees was not submitted to the jury. Even the District Court did not permit the jury to infer that the employees of Gates, Lacare, or Layman refused to work because of the violence at other mines, or that UMWA may be held liable under Section 303 under this theory. The Fourth Circuit's affirmation of these three cases on its violence theory constitutes a trial "*de novo*".

In the *Lacare* case, also a coal producer, the only evidence offered at the trial was that Lacare's employees quit working and joined other employees on an unidentified picket line. There was no picketing of Lacare's mine, and UMWA never became involved in any dispute that Lacare's employees may have had with him.

QUESTION FOUR

The Fourth Circuit found that all of the picketing or activities of unidentified persons described as pickets was conducted under the "defendant's supervision" (A-8), citing the fact that law enforcement officers testified that a UMWA representative told him that "they were his men and he was responsible for them," and that UMWA paid all the pickets $30 per week.[8] Furthermore, the Fourth Circuit noted that there was evidence introduced that a UMWA representative was responsible for some of the dynamiting and gunfire that occurred during the picketing and was either at or near the scene when the pickets assaulted and beat workers. The Fourth Circuit, after noting UMWA's contrary testimony, declared that, "the jury resolved the issue against the defendant," and that, "we and the defendant are bound by that resolution of the issue by the jury." However, the jury did not find adversely to UMWA as this evidence was introduced in the cases in which the jury found for UMWA. The Fourth Circuit then recited the fact that the NLRB had found adversely to UMWA in related cases, but none of the plaintiffs in the instant case were involved in the NLRB case, but all the unsuccessful plaintiffs were charging parties in the NLRB case. Furthermore, the

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[8] There is no testimony that UMWA paid all pickets $30 per week. UMWA paid strike relief to *some* of the employees of Marra Bros., M & T, C & P, Kinty, Kittle, and Lacare who were on strike, but not to the employees of Gates or Layman. It is undisputed that the total number receiving relief (138) was less than the number of pickets. In addition, among the 138 receiving relief were employees of employers who were not involved in the ten consolidated cases. The pickets included employees involved in the work stoppage, pensioned coal miners living in the area, wives, and children.

NLRB case did not involve a "secondary boycott" as the Fourth Circuit erroneously believed (see footnote 7, p. 11), but UMWA was charged with a Section 8(b)(1)(a) violation. Consequently, UMWA's responsibility in the instant cases is based upon activities of unknown and unidentified persons described as pickets and for picketing which UMWA did not initiate and of which it had no knowledge.

The Fourth Circuit's decision constitutes an improper implementation of the agency requirements of Section 301(e) of the Act. 29 U.S.C. 185(e). The purpose of Section 301(e) was to restore the ordinary doctrines of agency. *United Mine Workers* v. *Gibbs,* 383 U.S. 715, 736 (1966).

The Act does not impose the Fourth Circuit's test of responsibility of a labor union for such conduct. None of the employees involved in these disputes were even members of UMWA. They had merely signed cards authorizing UMWA to represent them in collective bargaining. Plainly, the Fourth Circuit's application of UMWA's responsibility is at odds with this Court's decision in *United States* v. *White,* 322 U.S. 694 (1944), and with that of the Court of Appeals for the District of Columbia in *Int'l Ladies' Garment Workers' Union* v. *NLRB,* 237 F.2d 545 (D.C. Cir. 1956), and with numerous decisions of the National Labor Relations Board. *Electric Wheel Co.,* 120 N.L.R.B. 1644 (1958); *National Union of Marine Cooks and Stewards,* 87 N.L.R.B. 54 (1949).

Thus, these cases present important and substantial questions concerning the distinction between primary and secondary picketing, a proper application of the "ally" doctrine that has not been decided by this

Court, a new "violence" theory, and the responsibility of a labor union for activities of persons involved in a labor dispute.

In addition, the Fourth Circuit's treatment of these cases calls for an exercise of this Court's power of supervision of the federal judiciary. Obviously, these cases should never have been consolidated for trial because it was impossible to separate the facts and the different issues involved in each case. The judgment of the Fourth Circuit reflects the confusion by its findings in one case as being applicable in another case, and by its determination of unlawful secondary picketing on facts and legal issues that were never presented to the jury and never submitted to the Fourth Circuit. The Fourth Circuit's decision is based upon hypothetical facts and constitutes a trial "*de novo*".

It seems obvious that the Fourth Circuit's judgment has an important and substantial impact on one of the most vital industries in the United States, because it relates directly to the collective bargaining process which is necessary to sound and peaceful labor relations between the unions and the coal industry.

CONCLUSION

For the reasons assigned, UMWA prays that this Cross-Petition and Petition for Writ of Certiorari be granted and that a Writ of Certiorari issue to review the decision and judgments of the United States Court of Appeals entered in Case No. 75-1462, 75-1463, 75-1464, 75-1465 and 75-1466, entered on October 21, 1976.

Respectfully submitted,

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January 7, 1977